

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**JULY 5, 1995**

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-3177-FT

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**COUNTY OF DOOR,**

**Plaintiff-Appellant,**

**v.**

**EARL F. LINDSAY and  
ELEANOR C. LINDSAY,**

**Defendants-Respondents.**

APPEAL from a judgment of the circuit court for Door County:  
DENNIS J. MLEZIVA, Judge. *Reversed and cause remanded with directions.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Door County appeals a judgment dismissing a forfeiture action commenced against Earl F. Lindsay and Eleanor C. Lindsay as a result of a zoning violation alleged to have occurred when the Lindsays stored a boat in a building authorized as an accessory building associated with a forestry operation being conducted on land owned by the Lindsays.<sup>1</sup> Door County contends that the trial court erred by finding that the storage of a boat

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<sup>1</sup> This is an expedited appeal under RULE 809.17, STATS.

was not prohibited under the ordinance that permitted accessory buildings to be built when associated with the conduct of the permitted use in the zoning district. Because this court concludes that boat storage is not a permitted use of an accessory building on property used for forestry purposes, the judgment is reversed and the matter remanded to the trial court for further proceedings.

The facts giving rise to this case are stipulated. The Lindsays own a parcel of land zoned as prime agriculture land (A-4) upon which they operate a tree farm. The Lindsays applied for a permit to construct an accessory building, which the County granted. At that time the zoning administrator cautioned the Lindsays that the ordinance provided that the accessory building could be used only for purposes related to their tree farm operation and that boat storage would not be permitted. The Lindsays constructed a thirty- by forty-eight-foot building in which they stored their eight- by twenty-four-foot power boat. Door County issued a citation to the Lindsays for violation of the zoning code, which was ultimately dismissed by the trial court based upon the trial court's conclusion that the storage of a boat was not prohibited by the zoning ordinances in question.

The interpretation of a zoning ordinance presents an issue of law which this court resolves without deference to the trial court. *Hambleton v. Friedmann*, 117 Wis.2d 460, 461-62, 344 N.W.2d 212, 213 (Ct. App. 1984).

The zoning ordinance in question, § III, CCCC., (1)(c) of the Door County Zoning Ordinance, page III-11 provides:

The primary purpose and intent of this district is to maintain, preserve, and enhance agricultural lands historically demonstrating high agricultural productivity. ... As a matter of policy it is hereby determined that the highest and best use of these lands is agricultural.

Permitted uses include:

- a. Apiculture, dairying, floriculture, forage crop production, forestry, gardening, general farming, greenhouses, grain production, grazing, horticulture, plant nurseries, orchards, paddocks, pasturage, stables for

livestock, truck farming, viticulture, livestock farming (except commercial feed lots), sod farming. Farm buildings housing animals, barn yards, and feed lots shall be at least 100 feet from any navigable water and shall be located so that manure will not drain into any navigable water. (Amended: 27 March 1990)

....

- c. Customary accessory buildings associated with the conduct of a permitted use in this zoning district. Customary accessory buildings shall include those involving the storage of vehicles, equipment, housing of livestock, and noncommercial incidental repairs. (Amended: 27 March 1990)

The trial court read the zoning ordinance to exclude uses only as they are enumerated. Such a reading misconstrues the ordinance in question. The ordinance authorizes specific uses on specifically zoned parcels. Only those uses enumerated are permitted. *See County of Columbia v. Bylewski*, 94 Wis.2d 153, 169, 288 N.W.2d 129, 137 (1980). Thus, all uses not enumerated under the terms of the ordinance are not permitted. *Id.*

An accessory building is permitted under the terms of the ordinance, which is further conditioned by the requirement that the building be associated with the conduct of the permitted use in the zoning district. In this case, the permitted use is a tree farm and, accordingly, the accessory building must be associated with the operation of the tree farm. Because the storage of a power boat is totally unrelated to this operation, it is not a permitted use within the terms of this ordinance.

Although the parties do not raise the issue, the question of ancillary uses of accessory buildings must be addressed. While we conclude that using the accessory building as a boathouse is prohibited by the ordinance, we do not mean to indicate that any ancillary storage of personal property is prohibited. When storage of personal property unrelated to the use of the property is minor and incidental use, the scope of the ordinance would not be so broad as to make such use unlawful. The degree of ancillary use will have to

be determined on a case-by-case basis, and, because it is not an issue here, we do not address the extent to which such ancillary use is permitted. Here, however, the accessory building was being used as storage for a boat of significant size. A significant portion of the building was dedicated to that purpose and the use for boat storage was so important that the building was constructed around the boat. Such use is not minor or incidental to the building in issue and is accordingly prohibited by the ordinance.

We therefore conclude that the trial court erred by finding that the storage of a power boat was a permitted use under the zoning ordinance in question. Because the storage of this boat is not a permitted activity as enumerated within the statute and such storage cannot be accurately described as a minor or merely incidental use, the trial court erred by dismissing Door County's citation.

*By the Court.*—Judgment reversed and cause remanded with directions.

This opinions will not be published. RULE 809.23(1)(b)5, STATS.